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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 3453 of 2003

Date of decision: 17.10. 2007

Shamsher Singh **...Appellant**

Versus

Harpal Singh **...Respondent**

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Ashwani Arora, Advocate for the appellant

Ms. J.J.Kaur, Advodate for the respondent

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RAJESH BINDAL, J.

The plaintiff is in appeal before this Court against the judgment and decree passed by the learned Lower Appellate court whereby that of the trial Court was reversed.

The claim made in the suit filed by the appellant/plaintiff was for possession of ½ share of the house by way of partition. It was submitted that the house in question was constructed by the father of the parties to the suit, who died on March 16, 1993 and accordingly both the brothers, were entitled to equal share in the property. However, the claim made by the appellant/plaintiff was contested by the respondent/defendant on the ground that the appellant who was in military service earlier, infact is living in a separate house, which was also purchased by father of the parties for him and further that in the Panchayat, the issue regarding partition of the house in question was settled alongwith the Bara. The value of the house was assessed at Rs. 38,000/- and a sum of Rs. 19,000/- was paid to the appellant/plaintiff and as far as Bara is concerned, the appellant/plaintiff was given ½ share therein. The trial Court decreed the suit of the appellant/plaintiff holding that the payment of the amount of Rs. 19,000/- as share of the appellant/plaintiff was not proved. However,

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learned Lower Appellate Court on re-appreciation of the entire material on record came to a definite conclusion that infact the agreement dated June 22, 1995 was entered into between the parties in the presence of Sarpanch and other senior members of the Panchayat. Both the parties had agreed that the appellant/plaintiff will get Rs. 19,000/- in cash in lien of the property in dispute, the value of which was assessed at Rs. 38,000/-. It seems that this was primarily for the reason that the appellant had already constructed a separate house for living, which is quite bigger as compared to the house in dispute, which is measuring 5 Marlas only. In addition to this ½ share in the Bara was given to the appellant/plaintiff. This agreement is duly signed by the appellant/plaintiff and by the wife of respondent. Subsequent understanding entered into between the parties on November 24, 1996 is also on record, which shows that two big trunks lying in the house in dispute were to be removed by the appellant/plaintiff on or before December 2, 1996, which was done by him later on.

The contention raised by learned counsel for the appellant is that the signature of the appellant was taken by the respondent on blank paper and further that so called agreement dated June 22, 1995 wherein the value of the property in dispute was assessed at Rs. 38,000/- and 50% of which i.e. Rs. 19,000/- was paid to him is not even signed by the respondent and accordingly, the same cannot be termed to be a valid agreement in the eyes of law as no attorney in favour of the wife of respondent had come on record to show that she was competent enough to enter into agreement on behalf of respondent. However, a perusal of the document i.e. agreement dated June 22, 1995 shows that it is not only signed by the appellant but a number of other persons, who are stated to be Sarpanch and Member Panchayats etc. A perusal of the document does not show that the same is prepared on any blank paper on which signatures of the appellant were already existing. As far as the signing of the agreement/understanding by the wife of the respondent is concerned, the issue could be raised by the

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respondent and not by the appellant. The respondent is not backing out of the agreement and had infact given Rs. 19,000/- on the basis thereof to the

appellant. Further factum of implementation of terms of the agreement is evident from the fact that admittedly appellant had already been given the possession of ½ share of the Bara which was also part of the property owned by father of the parties. Still further the most important aspect is that admittedly the appellant is living in his separate house constructed by him and the property in question is a small house measuring 5 Marlas only. Both the brothers are residing in the vicinity and it would be in the interest of both the parties that present litigation for small house situated in a village comes to an end early.

Accordingly, I do not find any substantial question of law arises in the appeal and the same is dismissed.

October 17, 2007 **(Rajesh Bindal)**
Pka/DK **Judge**